IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

NOTICE OF MOTION NO.262 OF 2006
IN
REVIEW PETITION LODGING NO.4 OF 2006
IN
WRIT PETITION NO.1887 OF 1997

Union of India & Anr. .. Applicants / Review Petitioners.

Versus

Mr.Atmaram Alwani & Ors. .. Respondents. Org. Petitioners.

Mr.M.I. Sethna, Mr.Asokan, Mr.A.M. Sethna for the petitioners.

Mr.Porus Kaka with Mr.A.K. Jasani for the respondents.

CORAM : H.L. GOKHALE, &
J.P. DEVADHAR, JJ.

DATED : 7TH DECEMBER, 2006.

P.C. :

1. Heard Mr.Sethna in support of this notice of motion. Mr.Kaka appears for the respondents.

2. The motion seeks condonation of delay of 999 days in filing the review petition. The review petition seeks review of the judgment and order dated 23rd October, 2002 in Writ Petition No.1887 of 1997 passed by the Division Bench of this Court, to which one of us (Devadhar, J.) was party. The respondents herein had filed that writ petition and the prayer which was granted by the Court was prayer (C) of the

writ petition. The petitioners herein had acquired the property of the respondents under Section 269UD of the Income Tax Act for an amount of Rs.4 crores. Through that prayer (C) writ or mandamus was sought directing petitioner Nos.1 to 4 to pay the amount of Rs.4 crores which was due on account of acquisition. The Division Bench had allowed that petition by the order passed on 23rd October, 2002.

3. During the pendency of that petition, that amount was deposited in this Court and in view of the petition being allowed, the respondents herein were permitted to withdraw the said amount. The amount has already been withdrawn.

4. The affidavit in support of this notice of motion affirmed by the Assistant Commissioner of Income Tax (Judicial) gives the following chronology in para 4 to explain the delay.

a. Date of order of High Court	23.10.2002
b. Date of letter written to ministry of Law and Justice, Mumbai regarding legal opinion	25.10.2002
c. Date of obtaining of certified copies	12.02.2003
d. Date of Status report as called by CBDT	22.05.2003
e. Date of letter written to CCIT, Mumbai for forwarding certified copy of High Court order for necessary action to the Board	13.03.2003

f.	Date of letter written by CIT & member AA Mumbai to Director OT/WT CBDT regarding status of the case	18.11.2003
g.	Date of letter received from Ministry of Law (CGA) conveying legal opinion	10.06.2005
h.	Date of letter addressed to CCIT-II Mumbai seeking direction on the opinion of MOL	12.08.2005
i.	Date of letter received from CCIT-II Mumbai in response to this office letter dated 12.08.2005	22.08.2005
j.	Letter received from Director (OT & WT) CBDT regarding the filing of review petition communicating the order of the Additional Solicitor General of India	06.01.2006
k.	The Review petition is filed on	08.02.2006

5. From the dates which are given here it is clear that the certified copy of the judgment and order of which review was sought was received by the applicants on 12th February, 2003. Mr.Sethna, learned counsel appearing for the Applicants submitted that the present review petition is being filed within 30 days from receiving the opinion from the Additional Solicitor General which is claimed to have been received on 6th January, 2006 which in fact it is not. However, that apart, when we asked Mr.Sethna as to when did the petitioners seek the opinion of the Additional Solicitor, Mr.Sethna could not give any particulars, for want of any such particulars in the concerned file. In any case it is clear that if the judgment and order was received on 12th February, 2003 it was the responsibility of the concerned officers of

the Applicants to move the Law Officer if they so wanted forthwith. It is of no use to wait for almost three years to obtain the opinion and then to file the application. There is no substance in this ground of condonation.

6. Incidentally, we may mention that the ground on which the review is sought as per para (b) of the review petition is that the Division Bench ought to have appreciated that the order under Section 269UD(1) was based on incorrect and misrepresented facts. This submission is on the footing that the period of lease was less than 12 years and reliance is sought to be placed on the definition of Transfer under Section 269UA(f). However, we find that even on that count the Division Bench has given clear finding that no suppression of material facts was resorted to. The submissions in that behalf were placed before the Division Bench. The Division Bench has gone into them and has found no substance.

7. For the reasons stated we do not find any merit in the motion for condonation. The same stands dismissed. Consequently, review petition also stands dismissed.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)